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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 314

GEORGE R. RIDDLE AND WILSON S. PACKER, AS TRUSTEES FOR ELECTRA PACKER, APPELLANTS,

vs.

JOSEPH M. WHITEHILL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED APRIL 2, 1887.

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INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	1	1
Exhibit—Memorandum, articles of agreement between J. M. Whitehill and Riddle, Coleman & Co., March 7, 1870, &c.	12	7
Appearance for defendant	17	9
Order granting time to answer	18	9
Demurrer filed	18	9
Demurrer to bill	19	9
Decree sustaining demurrer, &c.	21	10
Motion to set aside decree filed	21	11
Motion to set aside decree	22	11
Order continuing motion	23	12
Order denying motion to set aside decree, &c.	24	12
Order denying rehearing	24	12
Clerk's certificate	25	12

JUDD & DETWEILER, PRINTERS, WASHINGTON, NOVEMBER 27, 1889.

1 Be it remembered that on the 10th day of March, 1885, came into the office of the clerk of the circuit court of the United States for the eastern district of Arkansas Riddle & Packer, —, and c., by L. A. Pindall, Esq., their solicitor, and filed therein, on the chancery side of said court, their bill of complaint against Joseph M. Whitehill; which bill of complaint is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

In the Circuit Court.

GEORGE R. RIDDLE and WILSON S. PACKER, as Trustees for Electra Packer, Complainants,
v.
JOSEPH M. WHITEHILL, Defendant.

Complaint in Equity.

To the honorable judges of the circuit court of the United States for the eastern district of Arkansas:

Your orators, George R. Riddle and Wilson S. Packer, as trustees for Electra Packer, who are citizens of the State of Pennsylvania and reside in Allegheny county, in said State, bring this their bill of complaint against Joseph M. Whitehill, a citizen of the State of Arkansas, residing in Arkansas City, in said last-mentioned State, whom they pray may be made a defendant to this suit.

And thereupon, humbly complaining, your orators show unto your honors that on the 7th day of March, 1870, and for more than twenty years prior thereto, your orators and one T. J.
2 Coleman, now deceased, who in his lifetime and at the time of his death was a citizen of the State of New York, residing in New York city, were partners in business under the firm style of Riddle, Coleman & Co., with their principal office at the city of Pittsburgh, in the State of Pennsylvania; that said firm was engaged in dealing in coal, purchasing and transporting the same to the markets on the lower Mississippi river and elsewhere and selling the same for a profit.

That on said 7th day of March, 1870, said firm of Riddle, Coleman & Co. entered into an agreement with the defendant, Joseph M. Whitehill, to form a partnership to establish a depot and coaling fleet at Island Number Eighty-two, in the Mississippi river, in Chicot county, in the State of Arkansas, and to carry on and transact a business of retailing coal at said point, under the firm style of J. M. Whitehill & Co., upon the following terms and conditions:

The said Whitehill on his part agreed, obligated, and bound himself to give his whole attention to the management of the business of the firm at the coal yard, and the said Riddle, Coleman & Co. agreed on their part to furnish coal, capital, or credit to start the yard and were to charge no interest on the extra capital they were

required to put into the firm for this purpose, the interest on the capital being considered as an offset and in lieu of the services of said Whitehill at the depot—he, the said Whitehill, having no capital of his own to put into the said business.

The said Whitehill was to have one-half of the profits and bear one-half of the losses occurring or sustained in said business, and the said Riddle, Coleman & Co. were to have the other half of the profits accruing and bear one-half of the losses said firm might sustain. The said Riddle, Coleman & Co. were to deliver the
3 coal at said Island Eighty-two, and to be allowed the same prices for said coal that *was* obtained for such coal at Vicksburg and New Orleans.

That the business of said partnership was to be confined exclusively to selling coal at retail, and to extend to no other business, and was to continue for five years; provided said Riddle, Coleman & Co. should continue in the coal business for so long; but if they should wish to stop the coal business or to draw out of the business at Island Eighty-two, in either event the said firm of J. M. Whitehill & Co. were to wind up their business affairs and to sell the stock to the best advantage of all parties concerned. Memorandum articles of said agreement were written and signed by J. M. Whitehill and by said Riddle, Coleman & Co. on said 7th March, 1870, and a copy thereof is made a part of this bill of complaint. The original is believed to be in the possession of said defendant, Joseph M. Whitehill.

That in accordance with said agreement said firm of Riddle, Coleman & Co. did furnish to said firm of J. M. Whitehill & Co. a complete plant and outfit to start a coal yard and depot for the retail of coal at said Island Eighty-two, consisting in part of a wharf-boat, with rooms for office, for residence of the family of said Whitehill, quarters for the crew and employees of said firm, box-boats or flats for measuring out and selling coal from boxes; shovels, chains, lines, barrows, anchors, &c., and also a supply of coal in barges and coal-boats, and did insure the same and furnish additional plant and stock from time to time, as needed for said business, and said Whitehill & Co. did establish a depot and coal fleet at said Island Eighty-two and carry on the business of a retail dealer in coal for about the space of two years at said point, and did, with the knowledge and consent of said Riddle, Coleman & Co., start a retail store at said point partially for the purpose of supplying their labor
4 and partly for the profit, carried on with the capital of said Riddle, Coleman & Co. and for the profit of said firm of J. M. Whitehill & Co.

That in the latter part of the year 1871, or early in 1872, to induce the firm of J. M. Whitehill & Co. to change and remove their place of business, depot, and coal fleet from said Island Eighty-two to Arkansas City, the proprietors of said last-mentioned place leased to said firm, free of rent, the landing and coaling privileges at Arkansas City for a term of years, and donated to them certain town lots in said town, and, with the knowledge and approbation of said Riddle, Coleman & Co., the firm of J. M. Whitehill & Co. did, during

the year 1872, change the location of their said business from said Island Eighty-two to Arkansas City; and their fleet, barges, boats, lines, chains, and all their outfit was moved by one of the tow-boats of Riddle, Coleman & Co. from Island Eighty-two to Arkansas City, and from that time until October, 1877, and afterwards the said J. M. Whitehill & Co. carried on said business as dealers in coal at said last-mentioned place, and did also keep a general store and do a general merchandising business at said place; that, in addition to the landing and coaling privilege and the lots donated to said firm by the proprietors of said town as an inducement to said firm to locate their business at that point, the said J. M. Whitehill, for the use of said firm, did afterwards purchase a large number of other town lots in said town and pay for the same with the money of said firm, and did in like manner acquire and purchase an undivided half interest in the entire river front of said town for a distance of about three thousand feet, and did lease the other half interest in said river front for a period of twenty-five years from the — day of ——, 1872, and paid for the same out of the money and with the property of said firm, and did expend large sums of the money of said firm in building residence houses, store-houses, ware-houses, high-water platform, a large and expensive ice-house, a hotel, and other valuable improvements on the lots and land so donated to and purchased with the money and property of said firm—

That is to say, on the 12th day of June, 1872, Marion W. Lewis and wife, as an inducement to said firm to locate at said town, conveyed to said firm of J. M. Whitehill & Co. lots 1 and 2, 24, 25, 26, 27, and 28, in block 18; and on the 5th day of May, 1873, conveyed to said firm additional lots, to wit, lots 20, 21, 22, and 23, in block 18; lots 20, 21, and 22, in block 7; lots 15, 16, 18, 19, 20, 26, 27, 28, and 29, block 8; lots 25, 26, 27, 28, and 29, in block 9; lots 15, 16, 17, 18, and 19, in block 10; lots 20, 21, 22, and 24, in block 17; lots 1, 2, 3, 4, 12, 13, 14, 15, 16, 17, and 18, in block 21; lot 28, in block 20; and on the 2nd day of February, 1876, conveyed to said firm additional lots, to wit, lots 10, 11, 12, 13, 14, and 18, in block 5; and on the 1st day of May, 1872, the said Lewis and wife, as an inducement as aforesaid, leased the river front of said town to said firm for a term of five years, which was subsequently extended by deed dated the — day of ——, 187–, for the additional term of twenty years from said 1st day of May, 1877.

That on the 21st of July, 1875, the said Lewis sold and conveyed to said firm an undivided half of said river front, embracing all the land situated between the railroad track and the Mississippi river in front of said town of Arkansas City.

That the deeds to some of said land and town lots were taken in the name of said J. M. Whitehill & Co., and that the deeds to other parts of said land and town lots were taken in the name of J. M. Whitehill, but complainants show that all said land and town lots not donated to said firm was purchased with its money and for its benefit and held as partnership assets of the firm of J. M. Whitehill & Co.

6 Complainants further show that the business of said firm of J. M. Whitehill & Co. was very profitable, and large profits were realized therefrom, and all said profits and much of the capital furnished by Riddle, Coleman & Co. was used in the purchase and improvement of said lots and river front, and said J. M. Whitehill & Co. became largely indebted to said Riddle, Coleman & Co. for plant and stock furnished by them.

That said firm of Riddle, Coleman & Co. became embarrassed in their finances, and were forced to suspend business, and on the 15th day of October, 1877, made an assignment, whereby they assigned and conveyed to James Lynn, as assignee, under the laws of the State of Pennsylvania, all their real and personal property, including the indebtedness to them from J. M. Whitehill & Co. and all their interest in the business, profits, and property of said J. M. Whitehill & Co. of every description, to be collected or sold and disposed of for the benefit of their creditors. A copy of said assignment is made a part of this bill.

That said T. J. Coleman, one of the members of said firm, died in the year 1878, shortly after the date of said assignment, and the surviving members of said firm, to wit, the complainants in this cause, devoted themselves to the aid of the assignee to realize on the assets of said firm, and after several years' application to said object and the application of their individual means to the payment of the debts of said firm, they succeeded in settling up and discharging the debts of said firm, and at a sale of the assets of said firm not collected by said assignee, made in virtue of the powers contained in said deed of assignment, with the express assent of their creditors, he repurchased all the uncollected assets of said firm, including the indebtedness of said defendant, J. M. Whitehill, and as said firm of J. M. Whitehill & Co., and the same *was* assigned and conveyed by said assignee to

7 these complainants, to wit, W. S. Packer, as trustee for Electra Packer, and George Riddle, by deed dated the 3rd day of January, 1885.

That no part of the indebtedness of J. M. Whitehill or J. M. Whitehill & Co., or no part of the assets or property of said J. M. Whitehill & Co. or the firm of Riddle, Coleman & Co., was ever paid or collected by the said assignee, and the same and the right to sue for and collect the same is now vested in these complainants, who also are the sole surviving partners of said firm of Riddle, Coleman & Co. A copy of said repurchase assignment is made a part of this bill.

Complainants further show that at the time of said first assignment, to wit, on the 15th day of October, 1877, the said firm of J. M. Whitehill & Co. was indebted to said firm of Riddle, Coleman & Co. in the sum of $10,562.01 for plant, stock, boats, barges, flats, ferryboats, tugs, anchors, chains, lines, boxes, shovels, &c., and coal furnished and supplied to said J. M. Whitehill & Co. by said Riddle, Coleman & Co.

And the said Riddle, Coleman & Co. were entitled to one-half of the profits realized by said firm, then amounting to — dollars, and they were also entitled to one-half of the assets of said firm of J. M.

Whitehill & Co., which, on the 1st day of October, 1877, and at the date of said assignment, amounted in part as follows: In bills receivable, $12,820.09; stock of coal on hand, $4,000; property afloat—that is to say, one tug Flora, valued at $4,000; flats, barges, coal-boats, ferry-boat, steam-pump, and flat lines; chains, lumber, anchor, &c., $3,810.86; other personal property, $780; real estate, estimated value, $36.700; merchandise in stock on hand, $3,269.15.

That the said J. M. Whitehill published a dissolution of said firm and took and retained possession of all its assets as above enumerated, and afterwards, to wit, on the 10th day of March, 1881,
8 sold and delivered to Brown, Jones & Co. a part of the property of said firm of J. M. Whitehill & Co. enumerated above, to wit: The steam-tug Flora, six coal-flats, pump-boat, lines, tools, chains, &c., belonging to the flat, for the price and sum of $12,000; and also the good will of said business, consisting in fact of the monopoly of the coal privileges at said landing, for $4,000; in all, the sum of $16,000, received and collected from said Brown & Jones for the stock and privileges of said firm; and he also leased to said Brown & Jones the coal privilege at said landing for a term of ten years at the price and sum of $800 per annum, and has collected and received the same for three or four years, and is now in receipt of the same and still collecting the said annual rent.

That there is on said river front a large and valuable ice-house, warehouses, high-water platform, and other large and valuable improvements erected thereon with the money and for the benefit of said firm of J. M. Whitehill & Co., from which the said Whitehill has collected rents and received the profits since the date of said assignment of Riddle, Coleman & Co., and he should account to them for the one-half thereof, amounting to the sum of — dollars per annum.

That the said firm of J. M. Whitehill & Co., by virtue of being the owners and in possession of the entire river front of said town, including the steamboat landing and the ferry landing, have a monopoly of the receiving business at said place and the exclusive right to transport persons and property across the Mississippi river at Arkansas City, and the said Whitehill has since the date of said assignment carried on said business as a receiving and forwarding merchant, and also as a ferryman, and has derived large profits therefrom, amounting to — dollars per year, and the said
9 firm of Riddle, Coleman & Co. are entitled to one-half of such profits.

That there is on said river front and on some of said lots tenement-houses, and was also a hotel built with the money of said firm of J. M. Whitehill & Co., and from which said Whitehill has received annually large sums of money for rents of the same, amounting to the sum of — dollars per annum, and said Riddle, Coleman & Co. are entitled to the one-half thereof.

That the said defendant Whitehill has also sold some of the lots embraced in the conveyances aforesaid and received the money therefor, and has also exchanged some of the lots for other property situated in said town, and as the title to some of the lots was taken

in his own name the purchasers or grantees holding some of these lots may have taken the same for a valuable consideration and without notice of the right of said Riddle, Coleman & Co., but the said Whitehill should be held to account for the proceeds of such lots and the one-half of such proceeds decreed to complainants.

That said defendant Whitehill, on or about the — day of ——, 18—, purchased from Isaac Adair a plantation situated near Arkansas City, and took the title thereto in the name of his wife, Cornelia Whitehill, and his brother, J. P. Whitehill, as complainants have been informed and verily believe. Complainants, on information, charge that said Whitehill paid to the said Isaac Adair $6,000 or other sum in the purchase of said plantation, money arising from the business of said J. M. Whitehill & Co. and derived from the rents and profits of the property of said firm, and that he ought to be charged with such sum and required to account for the same to complainants.

To the end, therefore, that an account may be taken of the partnership business of the late firm of J. M. Whitehill & Co., these complainants pray that the firm of J. M. Whitehill & Co. may be dissolved by a decree of this court; that a master be appointed to state an account of the business of said firm, and to report under such directions as the court may prescribe the amount, value, and kind of property held and owned by said firm on the 15th day of October, 1877, and the liabilities of said firm at that time, and how said property has been disposed of, and how said liabilities have been paid or settled; how much said firm of J. M. Whitehill & Co. was indebted to said firm of Riddle, Coleman & Co., and what was the value of the interest of said Riddle, Coleman & Co. in the assets and business of said firm of J. M. Whitehill & Co.; what profits said Whitehill has realized from the property and privileges of said firm of J. M. Whitehill & Co., and how much thereof he should account for to said firm; what lots belonging to said firm or purchased with its assets said Whitehill has sold, and how much he has realized from such sales and to whom sold, and also the amount of rents said Whitehill has received from said property; how much money of said firm was used in the purchase of the Adair plantation by the said James M. Whitehill; how much money the said Whitehill received from the sale of said property and good will to Brown, Jones & Co., and how much he has received from the rent of said river front to said parties.

And at the final hearing complainants may have a decree for the balance found due to *him* from said defendant, and the lots and real estate purchased with the assets of said firm still remaining undisposed of to innocent holders for a valuable consideration without notice of the right of these complainants be appropriated to the settlement and satisfaction of said decree and a judgment against said defendant for any balance due them on the business of said partnership, and that a receiver be appointed to take charge of the assets of said firm and collect the rents on said river front, ice-house, warehouse, receiving wharf, storehouses, dwelling and tenement

11 houses on said real estate under appropriate directions from the court, and for general relief.

L. A. PINDALL,
Solicitor for Compl'ts.

UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

I, William S. Packer, one of the complainants in the foregoing bill of complaint, after being duly sworn, state that I have heard said bill read over to me, and that the matters and things as therein stated as of my own knowledge are true in substance and in fact, and that the matters and things therein stated on information and belief *he* believes to be true.

[SEAL.] W. S. PACKER.

Subscribed and sworn to before me this 7th day of March, 1885.

In testimony whereof I have hereto subscribed my name and affixed my official seal as notary public.

JOHN G. WARFIELD, *N. P.*

I am obligated for the costs.

L. A. PINDALL.

12 Memorandum — articles of agreement between J. M. Whitehill, of the first part, and Riddle, Coleman and Co., of the second part, as follows:

They agree to start a coal depot at Island Eighty-two in copartnership, and the said Whitehill agrees on this part to give his whole attention to the management at the coal yard, and the said Riddle, Coleman and Co. on their part are to furnish coal, capital, or credit to start the yard and charge no interest for the extra capital in lieu of the said Whitehill's services at the depot. The said Whitehill is entitled to one-half the profits or losses and the said Riddle, Coleman and Co. the other half, to be allowed about Vicksburg and New Orleans prices for the coal delivered at the island. It is also agreed that the business shall be carried on under the name and style of J. M. Whitehill and Co., and the partnership is exclusively for the purpose of selling coal by retail and no other, and to continue for five years, providing the firm of Riddle, Coleman and Co.

13 wish to continue in the coal business, but if they want to stop the coal business or wish to draw out of the business at Eighty-two the firm of J. M. Whitehill and Co. is to wind up their affairs and sell the stock to the best advantage for all parties concerned.

This the 7th day of March, A. D. 1870.

(Signed) J. M. WHITEHILL.
RIDDLE, COLEMAN & CO.

14 STATE OF PENNSYLVANIA, }
County of Allegheny, City of Pittsburgh. }

Whereas the late firm of Riddle, Coleman and Co., composed of Thomas J. Coleman, Geo. R. Riddle, and W. S. Packer, trustees for

Mrs. Electra Packer, having its chief place of business in the said city of Pittsburgh, by deed of voluntary assignment dated the 15th day of October, A. D. 1877, and recorded in the office for the recording of deeds, &c., in and for said county, in Deed Book, vol. 373, page 51, conveyed all the property, real and personal, of said firm and the said partners thereof unto James Lynn, assignee, in trust, to sell and dispose of said property for the benefit of their creditors; and whereas there are certain claims or interest in the property of certain persons not yet collected or recovered by said assignee, among them the persons and firms hereinafter named:

Now, therefore, I, James Lynn, assignee as aforesaid, by
15 virtue of said deed of assignment and of the authority in me duly vested and in pursuance to a public sale had this —, after due advertisement with the express consent of the creditors of said firm and partners, for a valuable consideration to me in hand paid, the receipt whereof I, as such assignee, do hereby acknowledge, do hereby sell, assign, set over, transfer, and convey unto W. S. Packer, trustee of Electra Packer, and Geo. Riddle, their heirs, executors, administrators, and assigns, all the claims, demands, interests, profits, and rights that the said late firm or the partners thereof or I, as assignee of said late firm, had or have, in law or equity, in the property of or in or against the following persons, firms, or estates, to wit:

Estate of H. B. Packer, Memphis, Tenn.; Givens and Co., New Orleans, Louisiana; Stockhouse and Co., New Orleans, Louisiana; J. M. Whitehill and the late firm of J. M. Whitehill, Arkansas City, Ark.; W. H. Stewart, Natchez estate of Gen. Gideon Pellow; J. J. Murphy. And the said W. S. Packer, assignee of Electra Packer, and Geo. R. Riddle and their assignees are hereby authorized and
16 empowered to institute and maintain in any and all courts any and all proceedings, in law or equity, that may be necessary or proper for the collection, enforcement, recovery, or proper adjudication of all such claims, demands, interests, &c., to the same extent and with the same force and effect as if such proceedings were instituted by me as assignee, without any right to incur any costs, fees, charges, or expenses in the name of said assignee, and without liability or responsibility on his part for any attorneys' fees, costs, charges, or expenses in connection with the same.

Witness my hand and seal this 3rd day of January, A. D. 1885.

JAMES LYNN,
(Signed) *Assignee of Riddle, Coleman & Co.*

Witness:
FRANK W. HUGHEY.

STATE OF PENNSYLVANIA, *County of Allegheny:*

Before me, a notary public in and for said county, came James Lynn, assignee of the late firm of Riddle, Coleman & Co., and acknowledged the foregoing instrument to be his act and deed, and desired that the same might be recorded as such.

Witness my hand and notarial seal January 5th, A. D. 1885.
17 [SEAL.]

FRANK W. HUGHEY,
Notary Public.

Filed and writ issued March 10th, 1885.
RALPH L. GOODRICH, *Clerk.*

And on March 18th, 1885, the defendant entered his appearance as follows:

UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

In the Circuit Court.

GEORGE R. RIDDLE and WILSON S. PACKER, as Trustees for Electra Packer, Complainants,
vs.
JOSEPH M. WHITEHILL, Defendant.

Now, on this day, comes the defendant, Joseph M. Whitehill, by his solicitors, D. H. Reynolds and James Murphy, and enters his appearance herein.

(Signed) D. H. REYNOLDS,
By JAMES MURPHY,
JAMES MURPHY,
Defendant's Solicitors.

18 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 13th day of April, anno Domini one thousand eight hundred and eighty-five, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, and on May 22nd, 1885:

GEORGE R. RIDDLE *et al.*
v. } 744.
J. M. WHITEHILL.

Comes the defendant, by D. H. Reynolds, Esq., his solicitor, and, on his motion, leave is given him until the first rule day in July next to file answer.

And on July 6th, 1885, as follows:

GEORGE R. RIDDLE *et al.*
v. } 744.
J. M. WHITEHILL.

Comes the defendant, J. M. Whitehill, by D. H. Reynolds, Esq., his solicitor, and files herein his demurrer to the bill of com-
19 plaint; which demurrer is as follows:

In the Circuit Court of the United States for the Eastern District of Arkansas.

GEORGE R. RIDDLE and WILSON S. PACKER, as Trustees for Electra Packer, Complainants,
v.
JOSEPH M. WHITEHILL, Defendant.
} Demurrer to Bill.

The defendant, by protestation, not confessing any of the matters in and by said bill complained of to be true in manner and form as the same are set forth, says that he is advised there is no matter or thing in said bill good and sufficient in law to call this defendant to account in this honorable court for the same, but that there is good cause to demurrer thereto, and he demurs accordingly, and for cause of demurrer says—

First. That said bill, in case the same were true, contains no matter of equity whereon this court can ground any decree or give complainants any relief as against this defendant.

Second. That it appears by the bill that said James Lynn is a necessary party, inasmuch as it is stated that said Riddle, Coleman & Co. assigned to him all the real and personal property of said firm, and it does not appear that he has disposed of the same, and the bill seeks action in relation thereto.

Third. That the right of action, if any existed, to sue for the settlement of the partnership matters accrued at the time of the dissolution of said firm of J. M. Whitehill & Co., on October 15th, 1877, and more than seven years next before the institution of this suit, and that the demand is stale and is barred as a cause of action against this defendant.

20 Fourth. That is appears from the bill that the creditors of said Ridele, Coleman & Co. were paid before the pretended sale to complainants by said James Lynn, as assignee, on January 3rd, 1885, and that there is no privity between complainants and this defendant to enable them to call on him for a settlement of said partnership matters.

Wherefore, and for divers other errors in said bill contained and appearing on the face thereof, this defendant demurs thereto and desires the judgment of the court whether he ought to make answer otherwise than as aforesaid, and prays to be hence dismissed with costs and charges in this behalf most wrongfully sustained.

D. H. REYNOLDS,
Solicitor for Defendant.

Filed July 6th, 1885.

RALPH L. GOODRICH, *Clerk.*

21 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 12th day of April, anno Domini one thousand eight hundred and eighty-six, at the United States court-room,

in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, an- on April 14th, 1886:

GEORGE R. RIDDLE and WILSON S. PACKER, as Trustees for Electra Packer,
v.
JOSEPH M. WHITEHILL. } 744.

Come the complainants, by L. A. Pindall, Esq., their solicitor, and comes the defendant, by D. H. Reynolds and James Murphy, Esqs., his solicitors, and the court, being now well and sufficiently advised of the matters arising on the demurrer to the bill heretofore argued and submitted, considers that the same be sustained, and that the bill be dismissed for want of equity. Thereupon complainants pray an appeal to the Supreme Court of the United States, which is allowed.

And on October 7th, 1886, as follows:

GEORGE RIDDLE *et al.*
v.
J. M. WHITEHILL. } 744.

Come the complainants, by X. J. Pindall, Esq., their solicitor, and file herein their motion to set aside the decree dismissing the bill in this case and for leave to amend their bill.

22 Which motion is as follows:

GEORGE R. RIDDLE and WILSON S. PACKER, as Trustee for Electra Packer,
v.
JOSEPH M. WHITEHILL. } Bill in Equity.

Come the said plaintiffs and move the court to set aside the order of this court dismissing the bill in this case and permit the plaintiffs to amend their bill as follows: By inserting after page 13 of the bill as follows: That said defendant continued in the possession and to control said assets belonging to the firm of J. M. Whitehill & Co. for the professed purpose of paying the debts of the firm of J. M. Whitehill & Co., representing to the said assignee, James Lynn, that the said firm of J. M. Whitehill & Co. were indebted in the sum of $20,000; that he, the said defendant, had in 1879 made arrangements to pay said indebtedness by installments of $6,000 per year, and that he was using the assets of the said firm for that purpose; that said defendant did not make any adverse claim to the assets belonging to the said firm of J. M. Whitehill & Co. until long after the sale hereinbefore stated, in 1881; that after paying all the debts of the firm of J. M. Whitehill & Co. the said defendant is

indebted to the firm of Riddle, Coleman & Co., and subject to amount as hereinbefore stated.

X. J. PINDALL,
Att'y for Pl'ffs.

Filed October 7th, 1886.

RALPH L. GOODRICH, *Clerk.*

23 And on October 23, 1886, as follows:

GEORGE R. RIDDLE *et al.*
—
J. M. WHITEHILL. } 744.

The motion to set aside the decree in this cause and for leave to amend is continued until the next term.

24 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 25th day of Oct., anno Domini one thousand eight hundred and eighty-six, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, and on Oct. 26th, 1886:

GEORGE R. RIDDLE *et al.*
v.
JOSEPH M. WHITEHILL. } 744.

And now the court, being well and sufficiently advised of the matters arising on the motion to set aside the decree herein, considers that the same be overruled; from which ruling of the court the plaintiffs pray an appeal to the Supreme Court, which is granted.

And on December 23rd, 1886, as follows:

GEORGE R. RIDDLE *et al.*
v.
J. M. WHITEHILL. } 744.

Come the complainants, by X. J. Pindall, their solicitor, and the motion of said complainants for a reconsideration of the motion for a rehearing in this cause, heretofore denied, is overruled; from which ruling of the court the plaintiffs pray an appeal to the Supreme Court, which is granted.

25 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby

certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the original remaining of record in my office.

The Seal of the Circuit Court, Arkansas District, U. S. A.

In witness whereof I have hereunto set my hand and the seal of said court this 20th day of January, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States of America the one hundred and —, 111th.

Attest: RALPH L. GOODRICH, *Clerk.*

Endorsed on cover: E. Arkansas C. C. U. S. No. 314. George R. Riddle and Wilson S. Packer, as trustees for Electra Packer, appellants, *vs.* Joseph M. Whitehill. Filed April 2, 1887.

Supreme Court of the United States.

October Term, 1889.

No. 314.

GEORGE R. RIDDLE and WILSON S. PACKER, Trustee, &c.

APPELLANTS,

v.

JOSEPH M. WHITEHILL,

APPELLEE.

Brief on part of Appellants.

JOHN DALZELL,
Attorney for Appellants.

WASHINGTON, D. C.
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1890.

Supreme Court of the United States.

October Term, 1889.

GEORGE R. RIDDLE and WILSON S. PACKER, Trustee, &c., Appellants,
v.
JOSEPH M. WHITEHILL, Appellee.
} *No.* 314.

Brief on Part of Appellants.

History of the Case.

The appellants claiming to have been, in the first instance, partners in business with the appellee, and subsequently tenants in common of lands, title to which had been taken in the name of the latter, filed their bill in the court below to obtain declarative relief establishing their title, and to compel an accounting.

This accounting, of course, relates to property, both real and personal.

To the bill thus filed the appellee demurred and his demurrer was sustained. Under the recognized rules of pleading, the averments of fact contained in the bill are to be taken as true, and the case is therefore to be decided on the assumption of their verity. These facts appear to have been as follows:

In the year 1870 the firm of Riddle, Coleman & Company was engaged in business, as it had been for more than twenty years before, in the city of Pittsburgh, Pennsylvania. The firm was composed of the appellants, George R. Riddle and Wilson S. Packer, and a third party, T. J. Coleman, now deceased. Its business was the purchase of coal, its transportation to, and sale in, the markets on the lower Mississippi river.

On March 7, 1870, this firm formed a partnership with Joseph M. Whitehill, the appellee, a resident of the State of Arkansas, originally for the purpose of carrying on a retail coal business at Island Number Eighty-two, in the Mississippi river, in Chicot county, Arkansas.

The partnership agreement was in writing (see copy, Record, p. 7). It was not very artistically drawn, but its intent is apparent. Riddle, Coleman & Company, on the one part, were to furnish the capital, "coal, capital or credit to start the yard," and Whitehill, on the other, was to contribute "his whole attention to the management at the coal yard." The profits and losses were to be shared in equal proportions by the parties. The title of the new partnership was to be "J. M. Whitehill & Company;" its business was to be the "selling of coal by retail and no other," and it was "to continue for five years, providing the firm of Riddle, Coleman & Company wish to continue in the coal business, but if they want to stop the coal business, or wish to draw out of the business * * * the firm * * * was to wind up their affairs and sell the stock to the best advantage for all parties concerned." This agreement was executed, the yard was established at Island Number Eighty-two, Riddle, Coleman & Company furnished the capital and Whitehill his services, and for two years the business was successfully prosecuted at the place named. All parties agreeing, its scope was enlarged by the establishment, with the firm

capital, of a retail store, partly to supply the firm's hands, and partly for profit.

At the end of two years the owners of a town known as Arkansas City offered inducements to the firm to remove its business to that point, and a removal was accordingly made. The entire outfit of the firm was carried by one of Riddle, Coleman & Company's boats to the new location, and business was there established. As a consideration for this removal the firm received from the owners of the town a lease, free of rent, of landing and coaling privileges, for a term of years, and the title to certain town lots. Thereafter the firm's business was continued at that place. In addition to a retail coal business, the firm opened and run a general store, purchased out of its receipts a large number of town lots, an undivided half-interest in the entire river front for a distance of about three thousand feet, and leased the other half-interest therein for a period of twenty-five years. The firm, furthermore, out of its receipts, built certain residences, storehouses, warehouses, a high-water platform, an ice-house, a hotel, and made valuable improvements on the property that it had thus acquired by donation and purchase.

The deeds for the real estate acquired were made, some of them to J. M. Whitehill & Company, and some of them to J. M. Whitehill; *but in all cases the purchase-money was that of the firm.*

The business was a profitable one, and by mutual consent, continued beyond the time limited in the original agreement.

In 1877, the Pittsburgh firm, Riddle, Coleman & Company, became financially embarrassed, and on October 15 of that year made an assignment, under the laws of Pennsylvania, for the benefit of their creditors, to one James Lynn, who duly qualified as assignee.

This assignment (which is made part of the bill filed in the court below), does not appear in the record, but included, it is alleged, all the firm's interest as partner in J. M. Whitehill & Company.

Shortly after the making of this assignment T. J. Coleman, one of the members of the firm of Riddle, Coleman & Company, died.

The surviving partners gave to the assignee their aid by way of service and by contributing of their individual means to such extent, that after some time, a settlement and discharge of all the firm's indebtedness was effected, without calling upon its interest in the firm of J. M. Whitehill & Company.

Thereupon, pursuant to power vested in him by the original deed of assignment and pursuant to law, the assignee, after due advertisement and having the consent of all parties in interest, for a valuable consideration sold and conveyed the uncollected assets of the firm of Riddle, Coleman & Co., at public sale, to the appellants.

By this means the appellants became invested on January 3, 1885, with title to the interest, whatever it was, of Riddle, Coleman & Company, as partners in the firm of J. M. Whitehill & Co.

At the time of the assignment by Riddle, Coleman & Co., in 1877, their interest in the firm of J. M. Whitehill & Company appears to have been a large sum made up of the value of the plant, and the appurtenances of a coal business, undivided profits, real estate standing in the firm name and in the name of J. M. Whitehill, stock on hand, etc., amounting in the aggregate to about $75,000 (see Record, p. 5).

All this the appellee, the solvent partner, retained both in possession and use, until the 10th day of March, 1881, when he disposed of the business, its good-will and fixtures, and the property in part, to Brown, Jones & Company, for $16,000.

The business having thus been wound up, there remained (besides personal property and undistributed profits) all the real estate of the firm and its improvements, title to which stood in the name either of J. M. Whitehill & Company, or J. M. Whitehill.

No division of realty or transfer of title as between the tenants in common has ever been made, nor has any accounting, judicial or other, been had between them.

To compel such division and accounting, the appellants, on March 5, 1885, filed their bill in equity in the court below against the appellee. To this bill the appellee demurred, alleging (1) want of equity in the bill, (2) want of proper parties, James Lynn, assignee, not being joined as plaintiff, (3) the statute of limitations, and (4) want of title in appellants under conveyance from the assignee.

Leave was then asked by appellants to amend their bill, which leave the court refused to grant.

The facts asked to be put on record by the amendment were as follows:

That J. M. Whitehill continued in possession of the assets of J. M. Whitehill & Co., upon the claim by him expressly made, that he was settling up the firm's affairs, and upon the representation to James Lynn, assignee, that he had made an agreement, in 1879, to pay off the firm's indebtedness (some $20,000) in instalments of $6,000 per annum; that he never made any adverse claim to the firm's assets or real estate until subsequent to the year 1881, and that all the firm's debts being paid, there is still a surplus, to part of which the appellants are entitled, as well as to large interests in real estate title to which Whitehill holds.

Argument.

It may be conceded that the voluntary assignment of Riddle, Coleman & Company to James Lynn for the benefit of

creditors on October 15, 1877, worked a dissolution of the firm of J. M. Whitehill & Company. Thereupon, the assignee acquired the right of Riddle, Coleman & Company, in the partnership, viz: the right to a share of what might remain after payment of the debts of the firm and a settlement of its accounts. And thereupon the solvent partner became a trustee to wind up the concern in the best manner for all interested and without unnecessary delay. He became liable to be held strictly as a trustee, and his conduct in discharging the trust will be carefully looked after by a court of equity.

Parsons on Partnership, sec. 442.

He could not sell to himself nor take at a valuation. The value of the partnership stock could only be ascertained by its conversion into money. (*Ibid.*)

Clearly then so far, this was a case for equity jurisdiction, and the first cause of demurrer was not sustainable.

But it appears that the assignee with the aid of the appellants and from their individual means in part, paid off the creditors of Riddle, Coleman & Company, and the interest in the firm of J. M. Whitehill & Company remained unsold and intact; and that this interest the assignee conveyed to the appellants at a public sale made pursuant to the terms of his original trust and with the express assent of all concerned. It would not seem to matter whether prior to this conveyance the debts of Riddle, Coleman & Company had been paid or not. If they had been paid by a realization of the assets of the firm, then the right of the assignee revested in the appellants, surviving members of the firm of Riddle, Coleman & Co., and a sale, though possibly superfluous, could not lessen that right. But in point of fact the assignee was indebted to the appellants for services and means advanced, and a sale to reimburse them was both

proper and legal. And "an assignee of an assignee of a copartner may maintain a bill in equity against the other copartners and the agent of the concern."

Pendleton and Webb *v.* Wainberrie *et al.*, 4 Cranch (Sup. Ct., U. S., 73.)

The second and fourth causes of demurrer are, therefore, not sustainable.

Are the rights of the appellants barred by the statute of limitations?

In order properly to answer this question let us consider the case, first, as if it were that of a mere commercial partnership, unembarrassed by any questions arising out of the ownership of real estate.

If it is conceded that the statute of limitations has any application, the material question is, When does the statute begin to run?

Upon the dissolution of the firm the interest of the appellants (which passed to their assignee) became a right to *a share of what might remain after payment of the debts of the firm and a settlement of its accounts*, that is to say, a right to something not then determined, but which could be ascertained only after lapse of time and expenditure of labor. The party charged with this labor—that of settling accounts and ascertaining and distributing the balance—was the solvent partner. His possession of the firm assets and property was not adverse, but, on the other hand, was the possession of all the partners.

In a word, upon the dissolution, the appellee became a trustee and agent to close up the firm's unfinished business, which was put in his exclusive control, to account for the proceeds thereof and pay over to the appellants (or their representative) whatever their share should prove to be on final settlement.

And until such settlement was had, and a demand and refusal to account was made, no statute of limitations would begin to run. Thus, it is said, in McClung *v.* Capehart (24 Min., 17)—

"When, after dissolution, the partner continued closing up the business, receiving and paying out money, the cause of action is deemed to have accrued at the date of the last item received or paid out. No demand is necessary before suit brought."

And again, in Hammond *v.* Hammond (11 Ga., 556) the principle is stated thus:

"The statute of limitations does not commence to run in favor of one partner against another even after a dissolution of the partnership as long as there are debts due from the partnership to be paid, or debts due to it to be collected. Nor, as long as either of these things is so, is a partner barred as against his copartner, by the principles of stale demand."

And in the case of *Massey* v. *Tingle* (29 Mo., 438), the court says:

"We know of no principle which declares that the statute of limitations begins to run against an action to adjust and settle partnership accounts from the time of its dissolution. When the account, or an item in the account is barred must be determined from the facts in relation to it. The application of the statute must be governed by circumstances."

Applying these principles to the case at bar, it may fairly be said that there was nothing on the face of the bill that could indicate to the Court with certainty the time when any statute of limitations began to run against the plaintiffs below. Putting the matter in the best possible shape for the

appellee, it cannot be contended that there was any settlement prior to March 10, 1881, when the solvent partner "sold and delivered to Brown, Jones & Company *a part* of the property of said firm of J. M. Whitehill & Co., * * * to wit, &c., &c., * * * and also the good-will of said business, consisting in fact of the monopoly of the coal privileges at said landing," &c., &c.

In fact, it is apparent that even at the date named there was no final settlement of the firm's affairs. But conceding for the purpose of the argument that there was, that was the time when the statute began to run.

This date was March 10, 1881, and the appellants filed their bill in the Court below on March 10, 1885, four years thereafter.

The statute of Arkansas provides: "Actions on promissory notes, and other instruments in writing not under seal, shall be commenced within five years after the cause of action shall accrue, and not afterward." (Sec. 4483, Digest of the Statutes of Arkansas, edition 1884.)

The Supreme Court of Arkansas *held*, in the case of Adams *v.* Taylor (14 Ark., 62), that "the relation between copartners does not create such a trust as will exempt a bill for a *mere account* and settlement from the operation of the statute of limitations, or the analogous bar of lapse of time or staleness of the demand." But this does not interfere in any way with the argument just advanced with the respect to the time when the statute begins to run.

It does, however, suggest the necessity of a distinction between *a mere account and settlement* of partnership affairs and such an accounting as is involved in this case.

This is not the case of the settlement of an ordinary commercial partnership. There are questions involved as to real estate belonging to the firm, as to title, rents, and profits, and to these a different rule must prevail from that relating to a *mere partnership accounting.*

At the time of the dissolution of the firm of J. M. Whitehill & Co., it was the owner of town lots, of river front with valuable appurtenant privileges, of residences, storehouses, an ice-house, and a hotel, *all bought and paid for with partnership funds.* The title to all this real estate stood in the name either of J. M. Whitehill or of J. M. Whitehill & Company.

Whether it stood in the one name or in the other, in either event the appellee was a trustee for his co-partners.

"Where real estate is purchased and paid for with partnership funds, but conveyed to one of the partners alone, a trust results in favor of the other partners."

McGuire *v.* Ramsey, 9 Ark., 519.

Under the law of Arkansas (Percifall and wife *v.* Platt, 36 Ark., 464), "a partnership, as such, cannot at law be the grantee in a deed or hold real estate. The legal title must vest in some *person*, and a partnership is not a corporation. If the title be made to all the partners by name, they hold the legal title as tenants in common without survivorship. If to one partner alone the whole legal title vests in him, which is the case also where the title is to a partnership name, which, as in this case, expresses the name of one party only with the addition of 'and company.' If the deed be to a name adopted as the firm style which includes the name of no party, it passes nothing in law. The same occurs where the deed is to one already dead."

As to the real estate, then, of the firm of J. M. Whitehill & Company—whether it stood in the name of the firm, or of J. M. Whitehill, the appellee was a trustee for the appellants. The statute of limitations has no application in such case, because there is no adverse possession.

"Lapse of time is allowed to prevail sometimes in equity, but only in analogy to the plea of the statute of limita-

tions at law, and cannot be allowed in favor of one partner in possession of real estate against the other, *for the possession of one is the possession of both.*"

McGuire *v.* Ramsey, 9 Ark., 519.

Whether, then, the court below had any right to assume from the face of the bill filed that the statute of limitations constituted a bar to the equity of the plaintiffs below, so far as the partnership as a mere commercial venture was concerned, it is clear that it had no right to turn the plaintiffs below out of court as *cestui que trustent* of real estate held by the defendant below as their trustee.

As to the question of delay, then, it is to be said—first, that treating the bill of the plaintiff below as a bill for an account in an ordinary commercial partnership case, it did not appear on its face that the statute of limitations barred the relief sought, and hence the demurrer, as to that question, should have been overruled; and second, taking into consideration that the bill was for a declaration of title as between trustee and *cestui que trustent*, as well as for an accounting, the demurrer was clearly not sustainable.

In point of fact it is impossible to distinguish, in principle, the case at bar from that of Chouteau *v.* Barlow, decided by this Court, and reported in 110 U. S., 238 *et seq.*

That case was in brief and in substance as follows: Sandford, Chouteau, Sarpy & Sire, were copartners in business in St. Louis, Mo. During its existence the partnership purchased and paid for with copartnership funds, acre lands and town lots in Wisconsin and Minnesota to hold and to sell for the benefit of the copartnership.

The firm was dissolved in 1852 by the retirement of Sandford. *Some* 24 *years after*, the executor and trustee of Sandford filed a bill against the representatives of the other members of the firm (all the partners having de-

ceased) to compel an account touching the property of the copartnership and touching the proceeds of any such property. Amongst other defences interposed was that of laches and the statute of limitations.

This Court said (p. 263): "On the whole case we are of opinion that, after the dissolution of the St. Louis firm, the members, other than Sandford, were entitled to collect and dispose of all its assets, including the Minnesota 'outfit' and the Minnesota lands, to liquidate its affairs, without the intervention of Sanford; that all claim on their part against Sandford individually was relinquished, leaving recourse only to these assets;" [this because of an agreement] "and that, if there should be any surplus of these assets after paying the debts of the firm and the advances of any of the other partners therefor, Sandford's executors would be entitled to his proper proportion of such surplus. No judicial accounting has been had on the basis of the rights of the parties as we have defined them. The bill prays that the defendants may account touching the affairs and property of the copartnership, and touching the proceeds of any such property. *We think the plaintiffs are entitled to such an accounting, and are not barred from it by laches or by the operation of any statute of limitations.*"

We therefore respectfully submit—

(1) That the plaintiffs below upon their bill filed presented a case properly calling for equitable relief;

(2) That the plaintiffs below were the only necessary proper parties thereto as plaintiffs; and

(3) That their claim to relief in equity was not barred by delay on their part, and that as a consequence the court below erred in *sustaining the demurrer.*

But again.

The court below erred in sustaining the demurrer, for the reason that this is not the kind of case in which the defence of limitation of time can be raised in that way.

(*a*) The statute of limitations has no application at all as we have seen, because of the relationship between the appellants and the appellee as trustee and *cestui que trustent*.

(*b*) Even if it had, the bill does not show on its face that the statute had run.

(*c*) This is a case belonging to the exclusive jurisdiction of equity (Pomeroy's Equity, sec. 222) and if barred at all by delay must be barred—not by any statute of limitations, but on the principle of stale demand. But as to stale demands the Supreme Court of Arkansas has said:

"No precise rule, applicable to all cases, as to what lapse of time will constitute a demand a stale one (so as to be barred in equity) can be declared. Each case must, to some extent, depend on its own circumstances, and will be construed or modified by them and by analogy to other known and settled rules of law." (Wilson *v.* Anthony, 19 Ark., 22.)

There is no evidence on the face of the bill of reprehensible delay. The law fixes no time within which an assignee shall wind up an estate. That James Lynn, assignee, did satisfactorily arrange a final settlement of the firm business of Riddle, Coleman & Company—a firm that had been in business over thirty years—within the period of four years is proof conclusive of his competence and diligence. It does not lie in the mouth of the appellee to complain that he did so without annoying him in his management and adjustment of the affairs of J. M. Whitehill & Company.

Nor does it lie in his mouth either to complain that his partners assumed his entire honesty and remained silent in the belief that when he had finally adjusted the firm's affairs, as he was in law bound to do, and as his partners had

a right to assume he was doing, he would account and make proper distribution. At all events they commenced their proceeding within the time limited by law after the appellee had disposed finally of the firm business.

Upon the whole case it is respectfully submitted that the decree of the court below should be reversed, and an opportunity afforded to have the case decided upon its merits in the light of the evidence to be offered by the parties.

JOHN DALZELL,
Atty. for Appellants.

FILED.
APR 24 1890
JAMES H. MCKENNEY
CLERK

No. 314.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

GEORGE R. RIDDLE ET AL., *Appellants*,

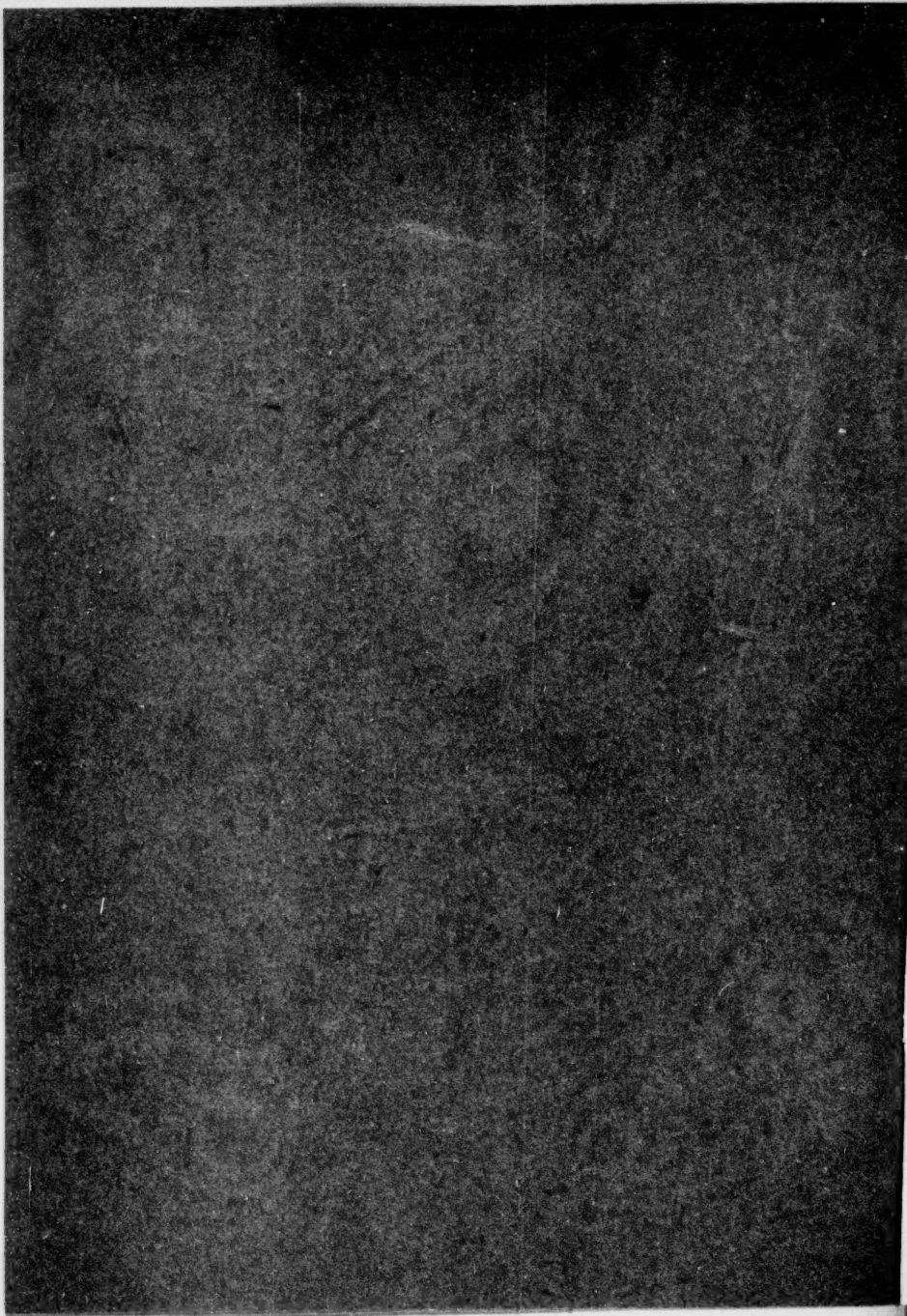
v.

JOSEPH M. WHITEHILL, *Appellee*.

BRIEF FOR APPELLEE.

D. H. REYNOLDS, *Solicitor for Appellee*.

MITCHELL & BETTIS, LITTLE ROCK.



No. 314.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

GEORGE R. RIDDLE ET AL., *Appellants.*

v.

JOSEPH M. WHITEHILL, *Appellee.*

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

On March 10, 1885, W. S. Packer as trustee for Electra Packer, and George R. Riddle, as purchasers of the uncollected assets of Riddle, Coleman & Co., filed a bill in the Circuit Court of the United States for the Eastern District of Arkansas against Joseph M. Whitehill, alleging that they and one T. J. Coleman composing the partnership firm of Riddle, Coleman & Co., had, prior to March 7, 1870, been engaged in business as dealers in coal at Pittsburg and in transporting coal to the markets on the lower Mississippi River and elsewhere for sale; that on March 7, 1870, said firm formed a

partnership with said Joseph M. Whitehill under the firm name of J. M. Whitehill & Co., to establish a coal yard or depot at Island 82, in the Mississippi River in Chicot county Arkansas, to continue for five years, but if Riddle, Coleman & Co. should want to quit the coal business or wish to draw out of the business at Island 82 then the business there should be closed; that Riddle, Coleman & Co. were to furnish the coal, capital or credit to start the yard, and Whitehill was to give his services at the yard, and they were to share equally in the profits or losses in the business; that the yard was started in accordance with the agreement and was continued at Island 82 until in 1872, when the outfit and business were transferred to Arkansas City, the change of location being induced by promises and grants made to J. M. Whitehill & Co. by the owners of Arkansas City; that several lots were given to J. M. Whitehill & Co. and other lots were purchased by the firm, that some of the deeds to the lots so purchased were made to J. M. Whitehill & Co. and others of them to J. M. Whitehill; that said Riddle, Coleman & Co. became financially embarrased and on October 15, 1877, made an assignment of all their assets to one James Lynn as assignee, to pay their debts. "That said T. J. Coleman, one of the members of said firm, died in the year 1878, shortly after the date of said assignment, and the surviving members of said firm, to-wit, the complainants in this cause, devoted themselves to the aid of the assignee to realize on the assets of said firm, and after several years application to said object

and the application of their individual means to the payment of the debts of said firm, they succeeded in settling up and discharging the debts of said firm, and at a sale of the assets of said firm not collected by said assignee, and in virtue of the powers contained in said deed of assignment, with the express assent of their creditors, they re-purchased all the uncollected assets of said firm, including the indebtedness of said defendant J. M. Whitehill, and of said firm of J. M. Whitehill & Co., and the same was assigned and conveyed by said assignee to these complainants, to-wit, W. S. Packer as trustee for Electra Packer, and George Riddle, by deed dated 3d day of January, 1885. That no part of the indebtedness of J. M. Whitehill or J. M. Whitehill & Co., or no part of the assets or property of said J. M. Whitehill & Co. or the firm of Riddle, Coleman & Co. was ever paid or collected by the said assignee, and the same and the right to sue for and collect the same is now vested in these complainants, who also are the sole surviving partners of said firm of Riddle, Coleman & Co." That notice of the dissolution of the partnership of J. M. Whitehill & Co. was published by Whitehill, and he took and retained possession of all the assets of said firm, part of which he sold and the other part was still in his possession, out of which he was receiving profits of which Riddle, Coleman & Co. were entitled to one-half.

And prayed for a dissolution of the partnership of J. M. Whitehill & Co.; for an account to be taken of the prop-

erty held and owned by the firm on October 15, 1877, and of how same had been disposed of, and for a decree for any balance that might be found due them.

[Just why it was necessary to try to eliminate the interest of Coleman's representatives in the firm of Riddle, Coleman & Co. after all the firm debts had been paid and there was a surplus in the hands of the assignee belonging to the firm; nor how there could be creditors of Riddle, Coleman & Co. to expressly assent to the sale of January, 1885, after the assignee and his assistants had "succeeded in settling up and discharging the debts of said firm;" nor how they hoped to close up the partnership of Riddle, Coleman & Co., and become the owners of the assets of that firm by the assignee turning over to them as assignees or purchasers what belonged to Riddle, Coleman & Co.; nor why they failed to allege or show the financial condition of the firm of J. M. Whitehill & Co., or that it was not necessary for the solvent partner, Whitehill, to consume all or even more than the assets of the firm in paying its debts, is not made plain by the bill.]

Whitehill demurred to the bill:

1. Because there was no equity on the face of the bill.

2. Because the assignee, James Lynn, was not made a party.

3. Because the cause of action, if any existed, was barred by limitation, and was a stale demand.

4. Because no privity existed between complainants and Whitehill to enable them to call on him for a settlement of the partnership matters of J. M. Whitehill & Co.

The demurrer was sustained and the bill dismissed and complainants appealed.

BRIEF.

The effect of the assignment of Riddle, Coleman & Co. was to dissolve the partnership of J. M. Whitehill & Co.

Parsons on Partnership, 400.

Jones, McDowell & Co. v. Fletcher, 42 *Ark.*, 462.

Ogden v. Arnot, 29 *Hun. (N. Y.)*, 146.

Bank v. Carrollton Railroad, 11 *Wall.*, 628.

Parsons on Partnership says: "An assignment to a third person has the effect to dissolve the partnership."

In *Bank v. Carrollton Railroad* it is said: "The effect of Graham's assignment to complainant was undoubtedly to dissolve the partnership which had existed between Beauregard, May and himself, but it did not make his assignee a tenant in common with the other two partners in the property of the firm."

In *Ogden v. Arnot* it is said: "When one partner becomes insolvent and assigns his property for the payment of his debts, the partnership is thereby dissolved, and the solvent partner may assume the right to settle up the partnership affairs, and may mortgage the partnership property to secure a partnership creditor."

And the publication of the dissolution of the partnership by Whitehill would of itself have amounted to a disso-

lution, as the time limited for the partnership, five years, had expired.

Parsons on Partnership, p. 401, says: "Where no time is limited one partner may dissolve at any time, or, where time expires and the partnership continues after, any one of the partners may dissolve."

The allegation in the bill that the business was continued, is in plain contradiction of the legal effect of the assignment, and of the statement of the bill that notice of dissolution was published by Whitehill, and the continuance was impossible from the nature of the business as the failure of Riddle, Coleman & Co. to supply coal to sell closed the business, and the allegation of continuance must be treated as surplusage, and as not admitted by the demurrer—the contract exhibited with the bill must be held to govern and limit any statement in the bill inconsistent therewith.

Dillon v. Barnard, 21 Wall., 437.

Bonnell v. Griswold, 68 N. Y., 298.

By the assignment of Riddle, Coleman & Co., the assignee acquired only the right of Riddle, Coleman & Co. in the partnership of J. M. Whitehill & Co., that is to say, the right to a share of what might remain after payment of the debts of the firm and the settlement of its accounts.

Bank v. Carrollton Railroad, 11 Wall., 628.

Case v. Beauregard, 99 U. S., 124.

In *Case v. Beauregard* it is said: "No doubt the effects of a partnership belong to it so long as it continues in existence, and not to the individuals who compose it. The right of each partner extends only to a share of what may remain after payment of debts of the firm and the settlement of its accounts."

In *Bank v. Carrollton Railroad* it is said: "The property or effects of a partnership belong to the firm, and not to the partners, each of whom is entitled only to a share of what may remain after payment of the partnership debts, and after a settlement of the accounts between the partners; consequently that no greater interest can be derived from a voluntary sale of his interest by one partner, or by a sale of it under execution. *In Taylor v. Fields, 4 Vesey, Jr., 596*, it was said that, 'A party coming into the right of a partner (in any mode) comes into nothing more than an interest in the partnership, which cannot be tangible, cannot be made available, or be delivered but under an account between the partnership and the partner, and it is an item in the account that enough must be left for the partnership debts.' * * Now it is quite possible that, on settlement of the accounts, Graham may be found indebted to the firm, or to his co-partners, and that the court would be required thus to decree. How can such a decree be made when he is no party to the record? Or it might appear that May is a large debtor to the firm. How can any decree be made

that will not prejudice one or the other of these partners? And yet, whether the bank complainant has any interest or not; whether it acquired anything under Graham's assignment, can be determined only by a final and conclusive settlement of the partnership accounts between all the partners, two of whom are not parties to this suit."

After the assignment of Riddle, Coleman & Co. it was the duty of the assignee to act promptly and take charge of and gather up the assets and reduce the same to money and pay the debts of the assignors and turn over to the assignors any surplus, after saving any sum necessary to pay off the debts of J. M. Whitehill & Co., over and above the assets of said firm duly applied.

Mansfield's Digest, Secs. 305, 309.

Raleigh v. Griffith, 37 Ark., 150.

Teah v. Roth, 39 Ark., 66.

Burrill on Assignments, 462, 480, 543.

The laws of Arkansas and the laws of Pennsylvania contemplate that the assignee shall, within a year after the assignment, convert the assets into money to pay the debts of the assignor, and immediately after the expiration of the year, to file in court an account current of his business as assignee for settlement. And *Burrill on Assignments, p. 543*, says: "If, after payment of all the assignor's debts, which are legally payable under the assignment, and all liens

on the trust effects, there is a surplus of the proceeds of sales and collections remaining in the hands of the assignee, such surplus belongs to the assignor, and the assignee is bound to pay it over to him. * * * So, if, after payment of all the debts, there should remain in the hands of the assignee, any property unconverted into money, it belongs to the assignor, and the assignee should re-convey it to him."

There does not seem to be any provision for the assignee, after the debts are paid, to sell the unconverted assets at public sale, or otherwise, to a part of the assignors, so as to divest the interest of the others.

It was the duty of the assignee, if there was anything that might go to Riddle, Coleman & Co. upon settlement of the partnership matter of J. M. Whitehill & Co. to sue for a settlement, and in such suit, all the members of the firm of J. M. Whitehill & Co. are necessary parties, even though they have parted with their interest by assignment or otherwise.

Bank v. Carrollton Railroad, 11 Wall., 628.

And such suit should have been brought within the time given for such assignee to close up his business as assignee, say, within one year, the time given by the laws of Arkansas and of Pennsylvania, the residences of the parties respectively.

There is no allegation of any attempt of the assignee to have a settlement of the partnership matters of J. M.

Whitehill & Co., nor any excuse for not making an effort during the time fixed for him to act and gather up the assets of his assignors; nor is there an allegation that in fact there would be anything justly due and going to Riddle, Coleman & Co. after a settlement of the debts of the firm of J. M. Whitehill & Co. It seems to be a fishing suit, and there is no equity in it.

II. AND IV.

If any one could maintain this kind of suit, it must be the assignee, as he was invested by the assignment with the rights of the assignors, and it does not appear that he has parted with these rights; for, if as alleged, the debts of Riddle, Coleman & Co. were paid before the pretended sale of January 3, 1885, the assignee had no power to sell, and complainants as purchasers, acquired no rights by the sale and transfer that will authorize them to sue for a settlement of the partnership matters of J. M. Whitehill & Co. without joining with the assignee, and with the legal representatives of T. J. Coleman, deceased.

And if all the right of action in the assignee was barred in January, 1885, he could transfer no right to any one by deed, sale or otherwise. The statute bar destroys the right that once existed, and confers title on claimant in possession.

Meeks v. Olpherts, 100 U. S., 569.

Trimble v. Woodhead, 102 U. S., 649.

Barclay v. Goodloe, 19 C. L. J., 17 S. C. of Ky.

Parker v. Metzer, 21 C. L. J., 341.

In *Meeks v. Olpherts* it is said: "Whatever doubt may have existed at one time on the subject, there remains none at the present day, that whenever the right of action in the trustees is barred by the statute of limitations, the right of the *cestui que* trust thus represented is also barred. This doctrine is clearly stated in *Hill on Trustees, 267, 403, 504,* and the authorities there cited fully sustains the text, both English and American."

In *Barclay v. Goodloe* it is said: "Where a trustee in whom is vested the legal estate in land is barred by limitations, the *cestui que* trust is also barred, notwithstanding his infancy."

In *Parker v. Metzer* it is said: "Adverse possession for the time prescribed vests a perfect title in the possessor as against the former holder of the title, and all the world; and he is entitled to all the remedies at law or in equity which are incident to possession under written titles."

In *Trimble v. Woodhead* it is said: "We do not see on what principle the failure of the assignee to sue within two years transfers his right of action to the complainant.

The right was certainly in the assignee, and if barred by the statute of limitations, would, if it had any effect on the title, make good the title of defendant.

Meeks v. Olpherts, 100 U. S., 564.

It seems to be well settled, that in regard to real estate, the undisturbed possession of the wrong doer for the time necessary to bar the action vests of itself a good title in the party holding such possession. It would be a curious application of this principle in the present case, which concerns real estate, to hold that this same lapse of time, instead of making good the defendant's title, or acting as a bar to the right to bring suit, transfers that right to another unimpaired by the lapse of time."

III.

The right of action, if any existed, to sue for the settlement of the partnership matters of J. M. Whitehill & Co. accrued at the time of the dissolution of said firm on October 15, 1877, and more than seven years next before the institution of this suit, and that the demand is stale and is barred as a cause of action against the defendant Whitehill, by the statute of limitations of three years, of five years and of seven years.

Constructive trusts and all trusts, save purely equitable or express trusts, are in equity subject to the statute of limi

tations. A clear distinction is made, recognized and acted on, between parties who are actual trustees of express trusts, and those who are placed in relations of trust and confidence—between actual trustees created by deed, and whose relations can only be established by the deed creating the trust, and such persons as are constructively trustees, and whose relations as trustees may be established by parol proof. As to the actual trustees the statute does not run, and as to constructive trustees it does run.

Adams v. Taylor, 14 Ark., 66-7.

Wood on Limitations, sec. 85.

Baxter v. Moses, 32 A. L. J., 371; S. C. Me., August 16, 1885.

Knox v. Gye, 4 English Rep., 60–1.

Noyes v. Crowley, 26 Eng. Rep., 482.

Speidel v. Henrich, 120 U. S., 386.

In *Baxter v. Moses* it is said: "Constructive trusts and all trusts, save purely equitable or express trusts, are in equity subject to the statute of limitations. *Wood on Limitations, sec. 85, and cases in note.* It is there said: 'With respect to the operation of the statute of limitations upon cases of trust in equity the distinction is, if the trust be constituted by the act of the parties the possession of the trustee is the possession of the *cestui que* trust, and no length of such

possession will bar. * * * One who is not actually a trustee, but upon whom that character is forced by a court of equity only for the purpose of a remedy, may avail himself of the statute.' The doctrine could not be more satisfactorily stated. The authorities support this principle with great unanimity."

In *Speidel v. Henrich* it is said: "In the case of an implied or constructive trust, unless there has been a fraudulent concealment of the cause of action, lapse of time is as complete a bar in equity as at law."

In *Adams v. Taylor* it is said: "Conceding that there is a *quasi* trust or confidence in the dealings between partners, it is not that kind of technical trust cognizable only in equity, and which excludes the operation of the statute. With equal reason such a claim to exemption from the statute could be made in all cases of bailment, agency and the various confidential relations in the transaction of business. Such is recognized to be the law in this country in numerous cases."

In *McKeown v. Guild, 9 C. L. J., 369*, it is said: "In *Albrecht v. Wolf, 58 Ill., 186*, this court held the following language: 'In *Farnum v. Brooks, 9 Pick., 213*, it was held that the statute of limitations does not apply to direct trusts created by deed or will and perhaps not to those created by appointment of law, such as executors and administrators, but *constructive trusts resulting from partnerships*, agencies

and the like are subject to the statute.' The doctrine of that case is supported by good authority."

Walker v. Walker, 16 Sergt. & Rawle, 379.

Kane v. Bloodgood, 7 J. C. R., 89.

Merwin v. Titsworth, 18 B. Mon., 582.

Wilhelm v. Caylor, 32 Md., 151, is authority to the point that the rule with respect to the bar of the statute of limitations is equally applicable in the case of a bill for an account by one partner against another as in other cases of a bill for an account.

See *Weisman v. Smith, 6 Jones Eq., 124.*

In *Knox v. Gye, 4 Eng. Rep., 60, Lord Westbury* said: "The right of the deceased partner's representative consists in having an account of the property, of its collection and application, and in receiving that portion of the clear balance that accrues to the deceased's share and interest in the partnership. * * * The surviving partner may be called a trustee for the dead man, but the trust is limited to the discharge of the obligation, which is liable to be barred by lapse of time; *as between the express trustee and the cestui que trust time will not run, but the surviving partner is not a trustee in that full and proper sense of the word.* It is most necessary to mark this again and again, for there is not a more fruitful source of error in law than the inaccurate use of language. The application to a man who is im-

properly, and by metaphor only, called a trustee, of all the consequences which would follow if he were a trustee by express declaration—in other words a complete trustee—holding the property exclusively for the *cestui que* trust, well illustrates the remark made by Lord Mansfield, that nothing in law is so apt to mislead as a metaphor. This is one of the sources of error in this case. The mistaken phrase that a surviving partner is a trustee, and that therefore no time can run as between him and the representative of the deceased partner, has lead to what I humbly conceive to be the error in the judgment originally given. There is nothing fiduciary between the surviving partner and the dead partner's representative, except that they may respectively sue each other in equity. There are certain legal rights and duties which attach to them; but it is a mistake to apply the word 'trust' to the legal relation which is thereby created.''

Between partners there is not such implied trust as will exclude the operations of the statute of limitations.

Adams v. Taylor, 14 Ark., 66.

Kane v. Bloodgood, 7 J. C. R., 90.

McKeown v. Guild, 9 C. L. J., 369 (S. C. Ill., 1879).

McClung v. Capehart, 1 N. W. Rep., 123.

Knox v. Gye, 4 Eng. Rep., 44.

Noyes v. Crawley, 26 Eng. Rep., 482.

Clay v. Freeman, 118 U. S., 106.

In *Noyes v. Crawley* it is said: "Therefore, on every principle as well as authority, I am bound to come to the conclusion, which I do with the most entire satisfaction, that the statute of limitations is a bar to such claim as this; and *that no party can maintain an action against a person who has been in partnership with him after the lapse of six years from the determination of the partnership*, unless there has been something in the interval to bind the parties. I entirely agree with the law as laid down by Mr. Justice Lindley, in the passage to which Mr. Bristowe has referred me. Mr. Justice Lindley says: 'So long, indeed, as a partnership is subsisting, and each partner is exercising his rights and enjoying his own property, the statute has, it is conceived, no application at all; *but as soon as a partnership is dissolved, or there is any exclusion of one partner by the other, the case is very different, and the statute begins to run.*' He then says: 'This has been decided by the House of Lords in *Knox v. Gye*, in which a surviving partner relied on the statute as a defense to a suit for an account instituted by the executor of a deceased partner. The deceased partner had died more than six years before the filing of the bill, and the right of his executor had never been recognized. The surviving partner, however, had continued the partnership business and had got in outstanding assets within six years. The Vice-Chancellor, Wood, held that the statute was not a bar to the suit; but the decision was reversed by Lord Chelmsford on appeal, and the House of Lords affirmed

Lord Chelmsford's decision.' And I am very glad they did, for I think it is very greatly to the interest of society that the statute of limitations should be applied to every case where it can with fairness be applied."

In *Adams v. Taylor* it is said: "Then recurring to the statute which limits all actions of accounts, *assumpsit*, or debt upon contracts not in writing, to three years; actions on promissory notes and contracts in writing, not under seal, to five years; upon writings obligatory, and judgments, to ten years; and the statute of non-claim against estates before adverted to, the policy which pervades it is sufficiently indicated; and where the statute applies, courts of equity according to these rules, as well as courts of law, ought to administer it.

Courts of law and courts of equity have concurrent jurisdiction in the matter of accounts, and of accounting in the matters of partnership.

Pomeroy's Eq. Jur., 186, 189, 1416, 1420, 1421.

Cochrane v. Allen, 58 N. H., 250.

Knox v. Gye, 4 Eng. Rep., 44.

Noyes v. Crawley, 26 Eng. Rep., 482.

In *Knox v. Gye* it is said: "Upon this bill the plaintiff prays with reference to this particular point, 'that an account may be taken by and under the decree and direction of the

court,' of what is due and owing to the plaintiff from the defendant, * * * and the interest thereof and the profits of the partnership; and that what shall appear on taking the same account to be due from the defendant may be decreed to be paid by him to the plaintiff. From this and from other portions of the bill it is clear that the account sought is an account of the estate of the partnership as it existed at the time of the dissolution, and of the property and receipts by Mr. Gye subsequent to the dissolution of the partnership. The bill is, therefore, in effect, an action by the plaintiff, as executor of the deceased partner, against the surviving partner for an account of the share of the deceased partner in the partnership between him and the respondent, which terminated by the death of Mr. Thistlethwaite, in December, 1854. An action might have been brought for this account by the appellant against the respondent at common law, but in a case like the present, a court of equity assumes and exercises concurrent jurisdiction with the courts of law, and this bill is brought by virtue of such concurrent jurisdiction."

The statute of limitations applies with equal force in courts of law and courts of equity in cases of concurrent jurisdiction (as in this case), courts of equity acting in obedience rather than in analogy to the statutes.

Story's Eq. Jur., Sec. 1520.

Adams v. Taylor, 14 Ark., 66-7.

Wilson v. Anthony, 19 Ark., 16.

Faulkner v. Thompson, 14 Ark., 481.

Sullivan v. Hadley, 16 Ark., 129.

Ringo v. Woodruff, 43 Ark., 484.

Pomeroy's Eq. Jur., 418, 419, 917.

Bank of U. S. v. Daniel, 12 Peters, 56.

Godden v. Kimmel, 99 U. S., 201.

Speidel v. Henrich, 120 U. S., 387.

In *Wilson v. Anthony* it is said: "It is a general rule that where there is a legal and an equitable remedy, in respect to the same subject-matter, the latter is under the control of the same statute bar as the former. In such cases the court of chancery follows the statute of limitations."

In *Bank of U. S. v. Daniel* it is said: "The courts of law and equity have concurrent jurisdiction and the complainants having elected to resort to equity, which they had the right to do, were as subject to be barred by the statute in the one court as in the other. In such cases the courts of equity act in obedience to the statute of limitations, from which they are no more exempt than courts of law."

The question of laches or limitations may be raised by demurrer, where, as in this case, the objection appears on the face of the bill.

Story's Eq. Pl., 484, 503, 751.

Mitford's Eq. Pl., 212 and notes C. I.

Sullivan v. Hadley, 16 Ark., 129.

Faulkner v. Thompson, 14 Ark., 481.

Rhode Island v. Massachusetts, 15 Peters, 233.

Lansdale v. Smith, 106 U. S., 391.

Noyes v. Crawley, 26 Eng. Rep., 482.

Speidel v. Henrich, 120 U. S., 387.

In *Speidel v. Henrich* it is said: "When the bill shows upon its face that the plaintiff, by reason of lapse of time and of his own laches, is not entitled to relief, the objection may be taken by demurrer."

In *Rhode Island v. Massachusetts* it is said: "In cases between individuals, where the statute of limitations would be a bar at law, the same rule is undoubtedly applied in a court of equity. And when the fact appears on the face of the bill, and no circumstances are stated, which take the case out of the operation of the act, the defendant may undoubtedly take advantage of it, by demurrer, and is not bound to plead or answer."

Appellee quotes from Mansfield's Digest the several sections of the statute of limitations limiting actions for real estate, for actions on contract express or implied not in writing, for actions on instruments in writing not under seal, and for actions not named in the statute [there being no express provision limiting actions for partnership matters], as follows:

SECTION 4471. No person or persons, or their heirs, shall have, sue or maintain any action or suit, either in law or equity, for any lands, tenements or hereditaments but within seven years next after his, her or their right to commence, have or maintain such suit shall have come, fallen or accrued; and all suits, either in law or equity, for the recovery of any lands, tenements or hereditaments shall be had and sued within seven years next after title or cause of action accrued, and no time after said seven years shall have passed.

SEC. 4478. The following actions shall be commenced within three years after the cause of action shall accrue, and not after:

First. All actions founded upon any contract or liability, express or implied, not in writing.

SEC. 4483. Actions on promissory notes, and other instruments in writing not under seal, shall be commenced within five years after the cause of action shall accrue, and not afterward.

SEC. 4488. All actions not included in the foregoing provisions shall be commenced within five years after the cause of action shall have accrued.

It is submitted that the statute of three years will bar all right of action for an accounting in matters of partnership.

V.

The authorities cited by appellants, where partners are mentioned as trustees, must be considered in the light of constructive trustees. By this test the case of *McGuire v. Ramsey, 9 Ark., 519*, may be doubted, and it is this doubt that is possibly implied in *Adams v. Taylor, 14 Ark., 67*, in speaking of the case. If the case of *McGuire v. Ramsey* is to stand as authority for holding that the statute of limitations or laches cannot be allowed in favor of one partner in possession of real estate, it must rest entirely upon the ground that it is there placed, that is to say, "It is laid down, as a general doctrine, in the books, that to create a resulting trust, there must be an original agreement creating the trust at the time of the purchase, or at least at the time when the contract for the purchase takes effect, and is executed by an application of it as partnership property," for no other will sustain it. Kelly & Ramsey dealt in real estate and the title was taken in name of Kelly, and it was recognized as partnership property, and a part and possibly all of it was divided—the question being, was it all divided, and if not, would the statute run against the claim of Ramsey in the part not divided. The court found it had not all been divided, and held that the statute, or lapse of time, would not be a bar to the assertion of the claim for the interest in the part not divided. It was not a question as to the statute barring a demand for a settlement of partnership matters between part-

ners, for no such settlement was sought. The same result might have been reached if Kelly & Ramsey had been merely part owners, or tenants in common, and not partners. And in *Adams v. Taylor* it is expressly held that the statute does run in cases of settlement of partnership matters between partners, and it is said that the case of *McGuire v. Ramsey* is not necessarily in conflict, but intimates that if in conflict then it should be overruled.

In the case at bar the partnership did not extend to dealings in real estate, and there was no original agreement to buy and sell lands, such business was not within the scope of the partnership. In no proper sense can it be said that the partnership funds were used in the purchase of lands. If in fact any money from the partnership business was put in lands by Whitehill, the other partners were not made part owners or tenants in common of it. Each party in the partnership of J. M. Whitehill & Co. was entitled to one-half of the profits and if either party invested such profits in property, the other party would have no interest in such property. If funds were taken by either party and applied to the purchase of property, not in line of the partnership business, it became the property of such party, and not of the firm, and no resulting trust could arise. On settlement between the partners if either had taken more than his share of the profits he would be indebted to the other partners for the excess. And even if property so purchased could in any event be followed and made subject to the payment of any balance found

due the other partners, such balance must first be ascertained by a settlement of the partnership matters, and this within the period or limitation fixed by law for actions of account.

It is submitted that the authorities in Arkansas, in this country and in England, maintain the proposition that the statute of limitations may be relied on as a defense in a suit between partners or their representatives, for a settlement of the partnership business; and that the circuit court did not err in sustaining the demurrer and dismissing the bill for want of equity.

Respectfully submitted,

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